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The Key to Successful Independence: State-Funded Postsecondary Educational Assistance for Emancipated Foster Youth

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Recommended Citation

23 St. John's J. of Legal Commentary 383 (2008)

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**CHILD ADVOCACY CLINIC SYMPOSIUM:
NO PLACE TO LIVE: THE HOUSING CRISIS
FACING YOUTH AGING-OUT OF
FOSTER CARE**

**THE KEY TO SUCCESSFUL
INDEPENDENCE: STATE-FUNDED POST-
SECONDARY EDUCATIONAL ASSISTANCE
FOR EMANCIPATED FOSTER YOUTH**

MICHELE M. BENEDETTO*

INTRODUCTION

A quote etched in the marble facade of the Boston Public Library epitomizes the American ideal of public education: "The Commonwealth Requires the Education of the People as the Safeguard of Order and Liberty."¹ State-funded education is not

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¹ JAY D. SCRIBNER & DONALD H. LAYTON, THE STUDY OF EDUCATIONAL POLITICS: THE 1994 COMMEMORATIVE YEARBOOK OF THE POLITICS OF EDUCATION ASSOCIATION (1969–1994) 9 (The Falmer Press 1995).

a novel concept; indeed, the New England colonies of Massachusetts and Connecticut created forms of public education in the 1600's.² In the modern era, every American state provides free elementary and secondary education for its children.³

The education ideal may remain constant, but the "concept of what is a necessary education has changed considerably in recent years."⁴ Whereas once a high school degree was enough to prepare a youth for successful adulthood, this level of education no longer provides assurance that a young adult will become self-sufficient.⁵ In today's world, post-secondary educational or vocational opportunities are necessary to ensure long-term successful independent living. Studies repeatedly demonstrate that persons with higher education reach correspondingly higher levels of financial stability than high school graduates.⁶ For example, a person with a university master's degree will earn \$1.3 million more over a lifetime than a high school graduate.⁷ As higher levels of education become necessary for financial stability, those who cannot obtain such education are at a severe disadvantage. This is especially true for youth aging out of foster care.

As individuals in state custody, children accepted into the foster care system have a substantive due process right to be free from harm. This due process right imposes an affirmative duty

² ELLWOOD PATTERSON CUBBERLEY, READINGS IN PUBLIC EDUCATION IN THE UNITED STATES; A COLLECTION OF SOURCES AND READINGS TO ILLUSTRATE THE HISTORY OF EDUCATIONAL PRACTICE AND PROGRESS IN THE UNITED STATES 15-20 (Houghton Mifflin Company 1934).

³ See Scribner, *supra* note 1, at 7 (illustrating that "[w]ith the advent of compulsory schooling, choice gave way to equity as the dominant public value. . . . [T]he decision to expand (demand) school-going to everyone seems inevitable in hindsight.").

⁴ Khalaf v. Khalaf, 58 N.J. 63, 71 (N.J. 1971).

⁵ Khalaf, 58 N.J. at 71. The Supreme Court of New Jersey noted in 1971 that "[w]hile a 'common public school and high school education' may have been sufficient in an earlier time. . . the trend has been towards greater education." *Id.* Expanding the concept of free post-secondary education for all individuals is worthy of examination, but is beyond the scope of this essay.

⁶ See, e.g., U.S. DEP'T OF COM., ECON. & CENSUS ADMIN., U.S. CENSUS BUREAU, THE BIG PAYOFF: EDUCATIONAL ATTAINMENT AND SYNTHETIC ESTIMATES OF WORK-LIFE EARNINGS [hereinafter COMMERCE REPORT] available at <http://usgovinfo.about.com/gi/dynamic/offsite.htm?site=http://www.census.gov/prod/2002pubs/p23%2D210.pdf> (reporting that, on average, people with bachelor's degrees can expect to earn \$2.1 million over a lifetime, which is "about one-third more than workers who did not finish college, and nearly twice as much as workers with a high school diploma.").

⁷ *Id.*

on states to protect foster youth⁸ and properly prepare them for emancipation.⁹ At the age of eighteen in most jurisdictions, youth emancipate from state custody into adulthood with the hope of successful independence. In reality, a large proportion of public wards actually emancipate into homelessness, unemployment, and incarceration.¹⁰

The public is increasingly recognizing the plight of youth aging out of foster care, and state and federal legislatures are responding to the concern. Legislative proposals to delay the age of emancipation might provide immediate relief for some foster youth in need, but this action is a temporary fix. To become self-sufficient adults, former foster youth must have access to higher educational or vocational programs. To succeed in such programs, most foster youth require some sort of financial support after they reach the age of majority.

This essay will therefore examine state funding of post-secondary educational and vocational training programs for youth *after* they emancipate from foster care. Part I will consider the state's responsibility to prepare foster youth for adulthood in light of statistics suggesting that many emancipated youth are not able to be self-sufficient in the "real world." Part II will explore the relationship between higher education and independence, as well as the barriers facing foster youth who wish to attend post-secondary academic or vocational training programs. To identify relevant precedent for state-ordered funding for educational expenses, this section draws an analogy to post-majority support for children of divorce. Many states allow courts to order non-custodial parents to pay for post-secondary education after a youth reaches the age of majority. The same policy justifications underlying such court action for children of divorce, such as the desire to equalize opportunities for children of broken homes, also apply to former foster youth.

⁸ See *Doe v. New York City Dep't of Soc. Servs.*, 649 F.2d 134, 141–42 (2nd Cir. 1987); see also *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 200 (1989) (stating that once a person is in state custody, the state has a constitutional "duty to assume some responsibility for [the person's] safety and general well-being.").

⁹ For an argument that foster children have a substantive due process right to proper preparation for emancipation into adulthood, see generally Michele Benedetto, *An Ounce of Prevention: A Foster Youth's Substantive Due Process Right to Proper Preparation for Emancipation*, 9 U.C. DAVIS J. JUV. L. & POL'Y 381 (2005).

¹⁰ See *infra* Part I.B.

Part III then assesses specific ways for states to fund post-secondary educational expenses for former foster youth. Using Massachusetts as a model, Part III proposes state implementation of "Former Foster Youth Educational Assistance Programs" designed to provide grants and tuition waivers to public colleges, universities, and vocational training programs for former foster youth. By giving youth the skills they need to become self-sufficient, Former Foster Youth Educational Assistance Programs will enable states to fulfill their obligations to prepare emancipating youth for adulthood.

I. STATE RESPONSIBILITY TO PREPARE FOSTER YOUTH FOR ADULTHOOD

When the state accepts a child into foster care, the state assumes a parental role.¹¹ In *DeShaney*, the United States Supreme Court analogized *in dicta* the circumstances of foster youth with incarcerated or institutionalized persons.¹² Foster youth "lose the freedom and ability to make choices for themselves, and must rely on the state for basic survival."¹³ As individuals living in state custody, they have a substantive due process right to be free from harm while under state care.¹⁴

This constitutional right includes more than simple protection from physical and emotional harm—foster youth also have a right to basic services. The U.S. District Court for the District of Columbia held that "[t]o the extent that certain services . . . are essential to preventing harm to the children in the District's custody . . . children have a constitutional liberty interest in those services."¹⁵ Courts recognize affirmative state duties, such

¹¹ Foster youth in state custody "are not other people's children. These are legally our children." Heather Knight, *Aid Urged For Older Foster Kids*, S.F. CHRON., Jan. 17, 2007, at B1.

¹² 489 U.S. at 201 n.9.

¹³ Benedetto, *supra* note 9, at 402–3.

¹⁴ *Nicini v. Morra*, 212 F.3d 798, 807. The court emphasized that "[a]fter *DeShaney*, many of our sister courts of appeals held that foster children have a substantive due process right to be free from harm at the hands of state-regulated foster parents." *Id.* See *Meador v. Cabinet for Human Res.*, 902 F.2d 474, 476 (6th Cir. 1990); *Norfleet v. Arkansas Dep't of Human Servs.*, 989 F.2d 289, 293 (8th Cir. 1993); *Yvonne L. v. N.M. Dep't of Human Servs.*, 959 F.2d 883, 891 (10th Cir. 1992). Federal and state courts are "clearly moving toward the expansion of substantive due process rights" for foster youth. Benedetto, *supra* note 9, at 403. For a more complete analysis of the substantive due process rights of foster children, see Benedetto, *supra* note 9.

¹⁵ *LaShawn A. v. Dixon*, 762 F. Supp. 959, 993 (D.C. 1991), *aff'd*, 144 F.3d 847 (1998).

as a foster youth's right to appropriate case placement, case planning, and training as necessary to comprise "adequate services to meet the basic needs of the child."¹⁶

This author previously discussed the need to include emancipation services as part of a youth's substantive due process right to "adequate services."¹⁷ Considering the fact that many foster youth continue to fail to successfully transition into adulthood, emancipation services alone are inadequate. A state's responsibility to prepare a youth for adulthood should include offering access to training or educational opportunities as necessary to succeed as an independent adult. Indeed, current outcomes for former foster youth indicate that lack of such education may have dire consequences.

A. Statistical Outcomes: The Status of Youth Leaving Foster Care

The troubled status of youth leaving foster care in America is well documented.¹⁸ Approximately 24,000 foster youth "age out" of foster care each year, and this group is disproportionately represented in homeless, incarcerated, unemployed and poorly educated populations.¹⁹ The most immediate problem for many of these youth is a lack of stable housing. In a December 2007 study by the Chapin Hall Center for Children, 18% of foster youth in the Midwest emancipated from care reported being homeless at least once since exiting care.²⁰ In California, the statistics are even worse: 65% of California foster youth emancipate without a place to live.²¹ Although foster youth make

¹⁶ See *Braam v. Washington*, 81 P.3d 851, 857 (Wash. 2003); see also *Youngberg v. Romeo*, 457 U.S. 307, 318–19 (1982) (noting that a state must provide "minimally adequate or reasonable training to ensure safety" for individual in state custody).

¹⁷ Benedetto, *supra* note 9, at 406 (stating that "[e]manicipation services are . . . necessary for a state to meet the 'basic needs' of a foster youth and to protect that youth from harm, both before and after [a youth enters] the 'real world.'").

¹⁸ Benedetto, *supra* note 9, at 384–395; Mark E. Courtney, et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 21*, CHAPIN HALL CTR. FOR CHILD. AT THE UNIV. OF CHI. (Dec. 2007), available at http://www.chapinhall.org/article_abstract.aspx?ar=1355&L2=61&L3=130; see generally Melinda Atkinson, *Aging out of Foster Care: Towards A Universal Safety Net for Former Foster Care Youth*, 43 HARV. C.R.-C.L. L. REV. 183 (2007).

¹⁹ Benedetto, *supra* note 9, at 384–395; see generally Courtney, *supra* note 18.

²⁰ Courtney, *supra* note 18, at 15–16 (illustrating that "[o]ver half of the ever homeless young adults had been homeless more than once.").

²¹ Melanie Delgado, et al., *Expanding Transitional Services For Emancipated Foster Youth: An Investment in California's Tomorrow*, CHILD'S ADVOC. INST. (Jan. 2007), available at http://www.cachildlaw.org/TransServices/Transitional_Services_for_

up less than 0.3% of the general population, 40% of the individuals in California homeless shelters are former foster youth.²² These numbers are not improving; the number of teenagers who “age out” of foster care without permanent homes has increased 41% since 1998.²³

The critical housing problem is exacerbated by the lack of educational opportunities for this population. Nationwide, one report found that only 58% of former foster youth completed high school, compared to 87% of youth in the general population.²⁴ Other studies report similarly alarming results: Chapin Hall’s survey of former foster youth in the Midwest reported that nearly one-quarter of the young adults participating in the study in 2007 did not have a high school diploma, compared with 11% for the general population, and just 2% had obtained even a two-year degree.²⁵

For some foster youth, attaining a high school degree is itself a nearly insurmountable goal. Many foster children in K-12 programs are in dire need of improved educational opportunities, including school stability and assistance with special needs.²⁶ The problem has reached the attention of lawmakers: several members of the federal House of Representatives introduced a resolution in October 2007 acknowledging “the importance of increasing the rate at which foster youth graduate from high school,” and expressing “concern that the current high school graduation rate of foster youth is too low.”²⁷ On May 19, 2008, a resolution was introduced in Congress to express “the sense of the House of Representatives that youth who age out of foster care should be given special care and attention.”²⁸

Legislators, advocates, and other scholars are examining the need for greater public investment to assist foster youth to

Emancipated_Foster_Youth.FinalReport.pdf.

²² *Id.* at i; see Knight, *supra* note 11.

²³ Christine Vestal, *States Trying to Extend Foster-Care Benefits*, STATELINE.ORG, Aug. 23, 2007, <http://www.stateline.org/live/details/story?contentId=234381>.

²⁴ Vestal, *supra* note 23; see Atkinson, *supra* note 18, at 192 (emphasizing that “[f]ormer foster care youths continue to suffer from disproportionately low academic achievement.”).

²⁵ Courtney, *supra* note 18, at 26.

²⁶ See generally Judith M. Gerber & Sheryl Dicker, *Children Adrift: Addressing the Educational Needs of New York’s Foster Children*, 69 ALB. L. REV. 1 (2005).

²⁷ H.R. Res. 733, 110th Cong. (2007).

²⁸ H.R. Res. 1208, 110th Cong. (2008).

graduate from high school.²⁹ However, even youth who are able to successfully complete high school and emancipate from the foster care system encounter barriers when they try to move forward with their educational goals. Although 70% of teenagers in the California foster care system “have a desire to go to college,” the Children’s Advocacy Institute reports that only 1% to 3% of former foster youth actually complete college.³⁰ The focus of this essay is the need to offer post-secondary assistance to former foster youth who completed high school, but require college or vocational training to achieve true independence as adults.

Foster youth also face significantly higher rates of unemployment than the general population. A Chapin Hall study published in 2004 found that only 35.1% of youth who aged out of foster care in the Midwest were employed.³¹ Chapin Hall followed up with a 2008 study revealing that a significant percentage of emancipated youth were “still not working when they were 21 years old.”³² A different study reported that former foster youth sometimes supported themselves through “illegal means,” with 24% dealing drugs and 11% engaged in prostitution.³³

In light of the substantial housing, educational, and employment barriers facing youth leaving foster care, a disproportionate number of former foster youth inevitably turn to crime.³⁴ The 2008 Chapin Hall study interviewing youth who aged out of foster care found that 77% of males and 54% of females interviewed for the study had been arrested at least once; 32% of males and 12% of females had been convicted of a

²⁹ See, e.g., Brandi Miller, Note, *Falling Between the Cracks: Why Foster Children Are Not Receiving Appropriate Special Education Services*, 5 WHITTIER J. CHILD & FAM. ADVOC. 547 (2006).

³⁰ Delgado, *supra* note 21, at 15. Julian Guthrie, *Foster Care Overhaul- Some Say Long Overdue- on Governor’s Desk*, S.F. CHRON., Sept. 29, 2007, at A1. Sam Cobbs noted that in California, “Five percent of young people who graduate from foster care end up going to college. Of those 5 percent, only 3 percent end up graduating.” *Id.*

³¹ Mark E. Courtney, et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth*, CHAPIN HALL CTR. FOR CHILD. AT THE UNIV. OF CHI., 42 (2004).

³² Mark E. Courtney, et al., Executive Summary, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 21*, CHAPIN HALL CTR. FOR CHILD. AT THE UNIV. OF CHI., at 16 (Dec. 2007), available at http://www.chapinhall.org/article_abstract.aspx?ar=1355&L2=61&L3=130 [hereinafter Courtney Executive Summary].

³³ Atkinson, *supra* note 18, at 193 (citing Thom Reilly, *Transition from Care: Status and Outcomes of Youth Who Age Out of Foster Care*, 82 CHILD WELFARE 727, 737 (2003)).

³⁴ See Benedetto, *supra* note 9, at 393.

crime since turning age eighteen.³⁵ In contrast, only 10% of males and 1% of females in the general population had been convicted of a crime.³⁶ The demonstrated correlation between time spent in foster care and subsequent adult criminal activity may be viewed as a result of the state's failure to properly train youth for the challenges of adulthood.³⁷

B. Legislative Push to Delay Emancipation for Former Foster Youth

In an effort to improve the situations of former foster youth, recent legislative focus has centered on altering the age of emancipation. Federal Congressional members are now attempting to nationalize a later age for emancipation. The Foster Care Continuing Opportunities Act, a bill introduced by Senator Barbara Boxer in 2007, would allocate federal funds to match state and county funds for the provision of "foster care payments and related administrative costs for foster youth 18 to 21."³⁸ By "providing federal funding for transitional youths," this law would enable states to extend jurisdiction over foster youth until age twenty-one.³⁹

The trend toward delaying emancipation demonstrates legislative acknowledgment of the fact that most youth (in foster care or otherwise) are simply not prepared to be self-sufficient at

³⁵ Courtney Executive Summary, *supra* note 32, at 12.

³⁶ *Id.* The study's authors compared the statistical outcomes of former foster youth with a "nationally representative sample" of same-aged youth who were not in foster care. *Id.* at 2.

³⁷ Benedetto, *supra* note 9, at 393; *see* Atkinson, *supra* note 18, at 191.

³⁸ Press Release, Senator Barbara Boxer, Boxer Working to Extend Foster Care (June 22, 2007) available at <http://boxer.senate.gov/news/outreach/2007/06/fostercare.cfm> [hereinafter Boxer Press Release]. Similar bills were introduced recently in the federal House of Representatives. For example, H.R. 4208 ("the Reconnecting Youth to Prevent Homelessness Act of 2007"), introduced on November 15, 2007, would mandate states to expand eligibility for foster care benefits to youth up to age 21. Reconnecting Youth to Prevent Homelessness Act, H.R. 4208, 110th Cong. (2007). In addition, H.R. 5466 (the "Investment in Kids' Instruction, Development, and Support Act") was introduced on February 14, 2008 and would expand foster care coverage to 21 (state optional). Invest in KIDS Act, H.R. 5466, 110th Cong. (2008).

³⁹ Atkinson, *supra* note 18, at 200 (*citing* *In Re Holly H.*, 104 Cal. App. 4th 1324, 1330 (Cal. App. 1 Dist. 2002), *citing* Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 686 (1999–2000 Reg. Sess.) as amended Aug. 29, 2000)) (stating that "[a]lthough the juvenile court has the authority to retain jurisdiction over a dependent child until age twenty-one, the reality is that federal funding for foster youth ends at the age of eighteen and common practice is for the juvenile court to terminate jurisdiction at that time.").

age eighteen.⁴⁰ Indeed, “a child’s employment opportunities do not improve merely because he reaches the age of majority.”⁴¹ In the United States, the “average young person must rely on parental support during the transitional period [to adulthood], and does not become self-sufficient until age 26.”⁴² Robin Nixon of the National Foster Care Coalition, an advocacy group, noted, “When we’re talking about our own kids, we understand that the transition to adulthood is lengthy and they often leave and come back home. We need to provide a similar experience for kids aging out of foster care . . . Legally, we are their parents.”⁴³

Extending jurisdiction is certainly worthy of consideration, especially in light of statistics demonstrating that youth who remain in foster care until age twenty-one may be more likely to succeed as adults. For example, Chapin Hall reported that former foster youth in states with extended jurisdiction until age twenty-one achieved higher rates of success in post-secondary education.⁴⁴ For some youth, particularly those in supportive foster homes, remaining in care as long as possible could make college or vocational training more accessible. However, youth in less supportive foster homes or group homes often wish to emancipate as quickly as possible from the confines of state custody; on their own, many of those youth will still require some form of vocational or college training to become successful adults.⁴⁵

Thus, simply extending traditional foster care placements to the age of twenty-one without providing post-secondary educational assistance will not prepare youth for independent living. In fact, “[u]nless states do more to find kids permanent homes and prepare them for adulthood, they could end up just as

⁴⁰ Boxer Press Release, *supra* note 38 (noting that “[t]oo many [former foster youth] have no place to go and end up leaving school or becoming unemployed. A frightening number face becoming homeless.”).

⁴¹ Leah duCharme, *The Cost of a Higher Education: Post-Minority Child Support in North Dakota*, 82 N.D. L. REV. 235, 237 (2006).

⁴² Delgado, *supra* note 21, at i.

⁴³ Vestal, *supra* note 23.

⁴⁴ Mark E. Courtney, et al., *When Should the State Cease Parenting? Evidence from the Midwest Study*, Chapin Hall Issue Brief # 115 at 4 (Dec. 2007), available at http://www.chapinhall.org/article_abstract.aspx?ar=1355 (finding that the odds of completing at least one year of college were 2.2 times higher in Illinois, with jurisdiction extended until age 21, than Iowa and Wisconsin, which terminate jurisdiction at age 18).

⁴⁵ See *infra* Part II.

vulnerable at 21 as they are at 18.”⁴⁶ Given the state’s parental obligation—and substantive due process obligation—to ensure foster youth succeed as adults, states should offer access to some form of post-secondary education or vocational training to properly prepare foster youth for life in the “real world.”

II. THE RELATIONSHIP BETWEEN HIGHER EDUCATION AND INDEPENDENCE.

Access to higher education serves an undeniably critical role in maintaining the long-term success of emancipated foster youth.⁴⁷ In the United States, post-secondary education was traditionally available only to an elite few. However, courts recognized as early as 1926 that times were changing, and “[w]here the college graduate [was once] the exception, to-day [sic] such a person may almost be said to be the rule.”⁴⁸ Indeed, it “cannot be doubted” that a young adult who is “unable to secure” some form of higher education is “generally handicapped in pursuing most of the trades or professions of life, for most of those with whom he is required to compete will be possessed of that greater skill and ability which comes from such an education.”⁴⁹

Completion of higher education today is unquestionably tied to financial stability and independence. In fact, “[f]ew people would refute this causal relationship between higher educational attainment and earning power.”⁵⁰ Workers today have “menial job prospects” if they have only attained the level of a high school diploma.⁵¹ Since two persons working full time in minimum wage jobs will earn an annual income far below the current median household income, it is nearly impossible to obtain financial

⁴⁶ Vestal, *supra* note 23.

⁴⁷ Delgado, *supra* note 21, at 15 (stating that “[o]ne of the most fundamental building blocks to a productive and successful adult life for former foster youth is access to higher education.”).

⁴⁸ Esteb v. Esteb, 138 Wash. 174, 182 (Wash. 1926).

⁴⁹ *Id.* at 183.

⁵⁰ Carol R. Goforth, *The Case for Expanding Child Support Obligations to Cover Post-Secondary Educational Expenses*, 56 ARK. L. REV. 93, 94 (2003) (citing Congressman Bob Clement, *Education: Where the Stakes are as High as Children can Dream*, 17 ST. LOUIS U. PUB. L. REV. 55 (1977)).

⁵¹ Judith G. McMullen, *Father (or Mother) Knows Best: An Argument Against Including Post-Majority Educational Expenses in Court-Ordered Child Support*, 34 IND. L. REV. 343, 345 (2001).

independence through such work.⁵² To obtain a job capable of funding a middle class standard of living, “[t]echnical training, trade school, college, and even post-graduate education are essential.”⁵³ Education is particularly important for former foster youth, who often cannot depend on family financial support if they cannot find employment.

A. Former Foster Youth and Post-Secondary Education

Emancipated youth recognize that education is necessary to guarantee a successful transition to adulthood. According to former foster youth Kristal McCoy, while “housing is the big thing that foster youth need,”⁵⁴ simply ensuring youth are not homeless will not create long-term success. McCoy argues that young adults “also need job skills to support the housing,” and “[t]hey need educational skills to support the job skills.”⁵⁵ Sam Cobbs, the Executive Director of First Place for Youth in Oakland, California,⁵⁶ agrees: “As we’re addressing housing, we need to take a look at education . . . If we’re going to begin to change these drastic outcomes, we need to focus on more funding for these kids to get to college and have the resources to stay there.”⁵⁷ Although many former foster youth would benefit from the opportunities available to college or vocational program graduates, the realities facing emancipated youth prevent most of them from reaching this goal.

⁵² *Id.* at 345.

⁵³ *Id.*; see COMMERCE REPORT, *supra* note 6.

⁵⁴ See generally Guthrie, *supra* note 30.

⁵⁵ *Id.*

⁵⁶ First Place for Youth is a nonprofit organization founded in 1998 to “to remedy the lack of services available to youth who are making the difficult transition from foster care to independent living.” First Place for Youth, <http://www.firstplaceforyouth.org> (last visited July 7, 2008). Among other things, the organization provides housing, employment, and health support to former foster youth. *Id.*

⁵⁷ Guthrie, *supra* note 30. The federal government provides limited resources for college tuition for former foster youth in the form of “Education and Training Vouchers.” See *infra* Part II.C.

B. The Prohibitive Cost of Education

Higher levels of education and/or vocational training can make a critical difference to the success rates for former foster youth.⁵⁸ However, the cost of obtaining higher education can be prohibitive for individuals with no means of support. Tuition for post-secondary education increased by double digit percentages during the 1980s and early 1990s; college costs were rising about four or five percent per year by the late 1990s.⁵⁹ For the 2007-2008 school year, the average annual tuition cost of attending a four-year public university was \$6,185, an increase of 6.6% from 2006.⁶⁰ This number, of course, does not include room and board costs, which can fall anywhere between \$10,000 and \$30,000 or more depending on the school.

Vocational training, also known as career education, would similarly present cost barriers for a youth with minimal resources. In 2004, the average annual cost of tuition and fees for a vocational training program was \$4,200.⁶¹ The average individual budget total, including tuition and fees, books, supplies, and room and board, for a student enrolled in such programs was \$9,900.⁶²

While emancipated youth are less likely to be able to afford college or vocational training, they are in greater need of education to remedy disadvantages resulting from their experiences in broken homes and their time in foster care.⁶³ However, the escalating expenses of higher education put college out of reach for most former foster youth. Without parents to finance college or "help to navigate through the often complex labyrinth of paperwork required to obtain financial [aid]," former foster youth are left to fend for themselves if they wish to attend

⁵⁸ See McMullen, *supra* note 51 (citing Ethan Bronner, *College Tuition Rises 4%, Outpacing Inflation*, N.Y. TIMES, Oct. 8, 1998, at A18 (stating that "[p]eople know that the best life chances and jobs come through better education.")).

⁵⁹ *Id.* at 346.

⁶⁰ College Board, 2007-2008 College Costs, *available at* <http://www.collegeboard.com/student/pay/add-it-up/4494.html> (last visited July 1, 2008).

⁶¹ NAT'L CTR. FOR EDUC. STAT., CAREER/TECHNICAL EDUC. STAT., *available at* <http://nces.ed.gov/surveys/ctes/tables/P55.asp> (last visited Feb. 28, 2008).

⁶² *Id.*

⁶³ See *infra* Part II.D.1.

post-secondary education or training programs.⁶⁴ In addition to tuition costs, the high cost of living expenses requires many former foster youth to work full-time while carrying a large college course load.⁶⁵ The stresses of balancing school duties with full-time work can affect a student's grades; in turn, a low GPA might make job-seeking more difficult down the line.

In addition, young adults who aged out of the system often do not have family homes to return to over school breaks or summer vacation. Lack of full-time student housing may therefore force a high-functioning student to confront the possibility of homelessness.⁶⁶ With no parents or family to support them, former foster youth must be able to look to the state for funding. State support for post-secondary educational programs could have a substantial positive impact on the lives of former foster youth struggling to succeed.

C. Current Federal Funding for Post Secondary Education: The Chafee Act

The federal government has already acknowledged the difficulties facing former foster youth, but the current funding system provides limited post-majority support. The Foster Care Independence Act of 1999 (known as "The Chafee Act") was created to provide states with "flexible funding" for "programs to be designed and conducted for former foster youth" moving from foster care to independent living.⁶⁷ The Act doubled federal funding for Independent Living Programs for youth from \$70 million to \$140 million per year.⁶⁸ To ensure accountability, the Act required states to report the successes or failures of their programs to the federal government.⁶⁹

⁶⁴ Delgado, *supra* note 21, at 15. States could provide funding to assist youth with difficult financial aid paperwork, as is the case in California. *See infra* note 78, and accompanying text.

⁶⁵ Delgado, *supra* note 21, at 15.

⁶⁶ *Id.* Note that extending foster care jurisdiction to age 21 could enable youth in this situation to have some type of housing assistance during college breaks.

⁶⁷ Benedetto, *supra* note 9, at 409.

⁶⁸ Memorandum from Cong. Res. Serv. to Senator Barbara Boxer on Servs. for Youth Emancipating from Foster Care, at 2 (2007) (hereinafter CRS Report) (on file with author).

⁶⁹ Benedetto, *supra* note 9, at 410. Despite this statutory mandate, the federal government has failed to implement a national database to collect Chafee Act data.

The wide flexibility granted to states theoretically allows states to creatively serve foster youth of various ages and levels of independence. In practice, however, state implementation of Chafee funds has resulted in several problems, including the potential for states to inaccurately report the services provided.⁷⁰ In addition, allowing states to implement programs according to their own discretion created a wide variation of services available to former foster youth.⁷¹

The Chafee Act does not require states to provide particular services to children; it serves more to finance services in areas such as education, housing, employment, health and traditional life skills.⁷² In 2002, to address educational needs, Congress allocated up to \$60 million in discretionary funds to former foster youth and youth adopted from foster care after 16 years of age.⁷³ Each “educational and training voucher” (“ETV”) is worth up to \$5,000 annually, and may be used to defray the cost of attending an “institution of higher education.”⁷⁴ All states receive funding for ETV vouchers. Youth receiving vouchers at age twenty-one who are making “satisfactory progress toward completion of a post-secondary education or training program” may obtain two more years of eligibility, until age 23.⁷⁵

Congressional recognition of the educational funding challenges facing former foster youth represents progress. However, the current levels of educational support are not enough to ensure youth succeed in post-secondary educational programs. First, \$5000 is not sufficient to defray the annual costs of attending most American higher educational or vocational institutions.⁷⁶ In addition, some evidence suggests

⁷⁰ Benedetto, *supra* note 9, at 411–12.

⁷¹ For example, foster youth in Los Angeles County in 2002 received “[. . .] ‘the most generous ILP benefits in the state,’ including free laptop computers upon completion of an ILP program and scholarships for college.” In contrast, youth in “[. . .] neighboring Riverside County received only a small monetary bonus upon graduation from high school.” Benedetto, *supra* note 9 at 413; *see also* Atkinson, *supra* note 18, at 198.

⁷² Gerber, *supra* note 26, at 66.

⁷³ PL 107-133 (H.R. 2873), 107th Cong. (2002) (enacted).

⁷⁴ CRS Report, *supra* note 68 at 2. The Chafee Act uses the term “institution of higher learning,” as defined by Section 102 of the Higher Education Act of 1965, to include “[. . .] traditional higher education institutions (i.e., public or private, nonprofit two- and four-year colleges and universities) as well as other postsecondary institutions (i.e., proprietary or for-profit schools offering technical training programs usually of less than two-years’ duration, and vocational schools).” *Id.* at 34, n. 2.

⁷⁵ *Id.*

⁷⁶ *See* discussion *supra* Part II.B.

that Chafee ETV voucher funds do not reach all youth in the way the Chafee Act intended. A significant number of states returned some or most of their allotted ETV funds due to “difficulties with building infrastructure to administer the funds.”⁷⁷

In addition to federal funds through Chafee (and potentially the Foster Care Continuing Opportunities Act⁷⁸ if the bill is passed), states offer various levels of post-secondary educational support to former foster youth. In approximately eleven states, current and former foster youth age eighteen and older may compete for scholarships to attend any college or university.⁷⁹ According to the Congressional Research Service, 16 states offer tuition waivers to youth who aged out of foster care or were in foster care at a specific age.⁸⁰ However, states vary regarding the level of educational support offered. Some states, including Massachusetts, Maryland, Texas and New Jersey, will waive tuition at public colleges or universities in their respective states.⁸¹ Nine states will provide “general assistance” to current and former foster youth attending college, including some funding for tuition, books, tutoring, and living expenses.⁸² For example, former foster youth in California who wish to attend four-year colleges may receive supportive services, such as help with financial aid applications.⁸³ In other states, educational

⁷⁷ CRS Report, *supra* note 68, at 7.

⁷⁸ Foster Care Continuing Opportunities Act, S. 1512, 110th Cong. (2007).

⁷⁹ CRS Report, *supra* note 68, at 8. These states are Delaware, Georgia, Illinois, Massachusetts, Nevada, New York, Oregon, Texas, South Dakota, Washington, and Wisconsin. Some states, such as Oregon, limit scholarships to attendance at public institutions. *Id.*

⁸⁰ *Id.* These states are Alaska, California (community colleges), Florida, Illinois (community colleges), Kansas, Kentucky, Maryland, Massachusetts, Maine, New Jersey, Oklahoma, Texas, Utah, Vermont, Virginia (community colleges), and West Virginia. *Id.*

⁸¹ *Id.* at 37. In Texas and Maryland, “determined groups[s] of foster youth” successfully lobbied the state legislatures for tuition waivers. See Susan Kellam, *Fostering Leadership* (May 7, 2000) <http://www.connectforkids.org/node/195>. See also Tuition Waiver Availability for Foster Youth, *available at* http://cbexpress.acf.hhs.gov/articles.cfm?article_id=116 (last visited Feb. 23, 2008).

⁸² CRS Report, *supra* note 68, at 8. These states are Alaska, California, Connecticut, Georgia, Hawaii, Illinois, Massachusetts, Oregon, and Rhode Island. *Id.*

⁸³ See *id.* at 37. California’s public universities may provide funds in the form of grants, but these broad grants are not designated specifically for former foster youth. *Id.* The California State University System offers a “State University Grant” to pay some or all of the university’s fee charges. *Id.*; see also Michael McPartlin, *Overview of Financial Aid & Related Programs Available for Former Foster Youth*, 10 U.C. DAVIS, J. JUV. L. & POLY 534, 540 (2006). The University of California system offers a “UC Grant,” which can pay some or all of student fees. *Id.* at 540. However, funds for UC grants are limited and the grants are awarded on a first-come, first-served basis. U.C. Davis Financial Aid, *Financial Aid: Grants*, <http://financialaid.ucdavis.edu/undergraduate/types/Grants.html>

support is much more limited; youth aging out of care in Wisconsin may receive a state scholarship ranging only in amounts from \$500 to \$2,500 on a one-time basis.⁸⁴ Youth in Arkansas may only receive the federal \$5,000 ETV voucher, since Arkansas does not provide any state support for post-secondary education of foster youth.⁸⁵

Thus, youth aging out of foster care may or may not have the resources available to attend educational institutions. Like the state-by-state discrepancies in Chafee-funded services offered to youth, the gap in state-funded educational services is partly due to policy differences among states. States with policies supporting education, such as Massachusetts, will work to ensure youth have access to post-secondary education, while states with policies less supportive of education, such as Arkansas, do not offer any state-funded educational support to their emancipated foster youth. For an individual youth who did not choose to be in foster care in any particular state, the support for attending post-secondary educational or vocational programs could vary widely depending on location.

D. Analogy: Court-Ordered Post-Majority Support for Children of Divorce

In an era when education is “increasingly an individual’s greatest asset,”⁸⁶ and paying for post-secondary education has become “the characteristic mode of intergenerational wealth transmission for most American families,”⁸⁷ children of broken homes enter adulthood at a heavy disadvantage. Legislative and judicial concern for the education of children of non-intact families is especially apparent in the area of child support. Some

(last visited Feb. 23, 2008). The lucky few who attend state universities which participate in the Guardian Scholars Program, such as California State University–Fullerton, may receive full scholarships and academic support. *Id.* See California State University–Fullerton Guardian Scholars, <http://www.fullerton.edu/guardianscholars/> (last visited Feb. 23, 2008).

⁸⁴ CRS Report, *supra* note 68, at 47.

⁸⁵ See Nat’l Child Welfare Res. Ctr. for Youth Dev., State-by-State Fact Pages: Arkansas, http://www.nrcys.ou.edu/ycd/state_pages/search.php?search_option=tuition_waiver (last visited Feb. 23, 2008).

⁸⁶ Charles F. Willson, Note, *But Daddy, Why Can’t I Go to College? The Frightening De-Kline of Support for Children’s Post-Secondary Education*, 37 B.C. L. REV. 1099, 1123 (1996).

⁸⁷ John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 730 (1988).

state governments acknowledge the challenges facing youth from broken families by allowing courts to order post-secondary educational expenses for children of divorce. Similar policy justifications supporting post-majority support orders can be easily applied to former foster youth.

When the Twenty-Sixth Amendment lowered the voting age to eighteen in 1971, most state legislatures also lowered the age of majority.⁸⁸ Approximately half of the states allowed courts to order post-majority educational expenses as part of non-custodial child support, even in the absence of an agreement between the parties.⁸⁹ Other states enforced post-majority support only pursuant to agreement by the parties. Only one state, Alaska, “neither compelled [post-majority] support nor enforced any agreements of such between the parties.”⁹⁰

For most states allowing courts to order post-majority support, the court authority to do so is conferred by statute, either “expressly or by implication.”⁹¹ Despite the jurisdictional split between states in this area, states continue to consider the expansion of post-secondary educational support for youth over age eighteen. For example, a bill introduced in Massachusetts in 2007 would allow a court to order “maintenance, support and education” for a child until age 23, if the child lives with a parent and is “principally dependent” upon that parent due to enrollment in an educational program.⁹² Similarly, a proposed Kansas statute includes a provision allowing courts to order post-majority support “continuing through the term during which the child completes post-secondary or vocational education program or reaches 23 years of age, whichever first occurs. . . .”⁹³

⁸⁸ Willson, *supra* note 86, at 1101.

⁸⁹ DuCharme, *supra* note 41, at 236.

⁹⁰ *Id.* For a more detailed explanation of post-majority support for children of divorce, see generally DuCharme, *supra* note 41 and Willson, *supra* note 86.

⁹¹ See *Ex parte Bayliss*, 550 So.2d 986, 989 (1989); see also Willson, *supra* note 86 at 1104 (noting that court authority in this area is either clearly granted in a statute, or has developed through court interpretation of “ambiguous statutory language”).

⁹² H.R. 4269, 185th Leg. Sess., (Mass. 2007).

⁹³ H.R. 2192, 2007 Leg. Sess. (KS 2007).

a. Policy Justifications for Post-Majority Support in Dissolution Proceedings

State legislatures allowing courts to order post-majority child support recognize that “the age of majority is not always a good proxy for one’s ability to support oneself.”⁹⁴

Although state statutes differ in this area, states allowing court-ordered post-majority support share similar policy justifications. First, children of broken homes are often those in greatest need of economic stability as young adults. Research shows that children of divorce are “at greater risk, emotionally and financially, than children in intact families.”⁹⁵ Post-majority support from non-custodial parents can mitigate the “harsh economic impact” of divorce on children, and “ensure that a child’s life opportunities are not unduly diminished by the family breakdown.”⁹⁶ In an age when post-secondary education or training is necessary for economic success, but is also increasingly expensive, parental financial support is often necessary to make such programs available to young adults.⁹⁷ A court ordering post-majority support in dissolution proceedings is therefore “acting *in loco parentis* in an attempt to place the child in the position he or she would have been in but for the divorce.”⁹⁸

A second argument justifying court-ordered post-majority support is the societal benefit of educating young adults. State-supported education serves a public purpose: an educated citizenry is generally more able to contribute to civic duties and responsibilities.⁹⁹ The United States Supreme Court has consistently recognized the states’ interests in promoting

⁹⁴ Keely A. Magyar, *Betwixt and Between But Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 TEMP. L. REV. 557, 558–600 (2006) (citing scientific research supporting the argument that “young people in the United States today do not finish ‘growing up’ until well past the age of eighteen”).

⁹⁵ McMullen, *supra* note 51, at 367.

⁹⁶ DuCharme, *supra* note 41, at 239; *see also* Ex parte Bayliss, 550 So.2d 986, 995 (1989) (“By imposing an educational support obligation on [noncustodial] parents, at least one of the disadvantages caused children by divorce can be reduced or eliminated.”).

⁹⁷ Goforth, *supra* note 50, at 96.

⁹⁸ DuCharme, *supra* note 41, at 239.

⁹⁹ *See* Scribner, *supra* note 1, at 9 (“[T]he purpose of public schooling is to advance the interests of the public as represented by the state, and to prepare a coming generation for success in the future.”).

education.¹⁰⁰ Some state constitutions, including New York, Minnesota, and North Carolina, include a right to education.¹⁰¹ Moreover, the abundance of public universities and community colleges in the United States represent “evidence of each state’s interest in educating its citizens.”¹⁰²

Without a well-educated work force, states “will simply lack the necessary foundation for economic growth.”¹⁰³ The inability of many young adults to improve their job prospects through education has a direct negative impact on society at large, who often pays the cost of supporting populations who cannot make ends meet.¹⁰⁴ States therefore have an even greater interest in promoting educational opportunities for children of non-intact families, who are at a higher risk of failing to achieve self-sufficiency and relying on the state for support.¹⁰⁵

A third policy justification for post-majority support is grounded in the nature of parenting. Persons choosing to become parents “have long been required to provide for the reasonable care, nurture and education of their children.”¹⁰⁶ Thus, even if a divorced parent would prefer not to pay post-majority educational expenses for a son or daughter, courts may impose this burden as a “parental obligation.”¹⁰⁷ An Alabama court

¹⁰⁰ Willson, *supra* note 86, at 1123; *see, e.g.*, Aguilar v. Felton, 473 U.S. 402, 415 (1985).

¹⁰¹ *See* Skeen v. State, 505 N.W.2d 299 (Minn. 1993); N.Y. Civil Liberties Union v. State, 4 N.Y.3d 175 (2005); Hoke County Bd. of Educ. v. State, 599 S.E.2d 365 (2004).

¹⁰² Willson, *supra* note 86, at 1128; *see also* Esteb v. Esteb, 138 Wash. 174, 181 (Wash. 1926) (“That it is the public policy of the state that a college education should be had, if possible, by all of its citizens, is made manifest by the fact that the state of Washington maintains so many institutions of higher learning at public expense.”).

¹⁰³ Goforth, *supra* note 50, at 93 (“Arkansas is unlikely to enjoy economic prosperity unless and until increased emphasis is placed on higher education in the state.”).

¹⁰⁴ *See infra* Part III.C.; *see also* McMullen, *supra* note 51, at 367–68 (discussing the argument that “[. . .] better educated children are more likely to be self-supporting at a reasonable level and are less likely to be a burden on society.”).

¹⁰⁵ Robert I. Lerman, *Impacts of Marital Status and Parental Presence on the Material Hardship of Families with Children*, THE URBAN INST. AND AM. U. 24 (July 2002), available at http://www.urban.org/UploadedPDF/410538_MaterialHardship.pdf (finding that “[. . .] children growing up without two natural parents do worse on a variety of social and economic outcomes.”).

¹⁰⁶ Goforth, *supra* note 50, at 96 (*citing* Jonitz v. Jonitz, 96 A.3d 782, 787 (N.J. Super. Ct. App. Div. 1953) “Basically it is indubitable that a common school education has for centuries been regarded as a necessary to which a child is entitled at the expense of the parent. Indeed it is a parental obligation which Blackstone characterized as one of supreme importance to the family life and to society in general. Solon excused the children of Athens from supporting their parents if the latter had neglected to give them early training. We now have our compulsory education laws.”).

¹⁰⁷ *Id.*

considering the issue noted that “in normal families, parental sacrifices to provide a college education to their children do not stop when a child reaches majority age. . . the educational support obligations of noncustodial parents of disrupted families likewise should not cease at that time.”¹⁰⁸ Under this theory, courts ordering noncustodial parents to pay post-secondary educational expenses are merely trying to equalize opportunities for children of non-intact families on an equal playing field.

b. Policy Justifications for Post-Majority Support for Former Foster Youth

Similar—and stronger—policy arguments may be made for the children of broken homes who land in foster care. Indeed, some youth are wards of the state precisely because they are children of divorced parents who lack the financial means to care for their children. Because their experience in foster care can leave these youth financially and emotionally vulnerable, they are at high risk of failing to achieve economic independence as adults.¹⁰⁹ Moreover, most foster youth do not have parents to depend on in times of trouble; youth who cannot turn to family members for basic needs such as housing usually cannot rely on family support for post-secondary education or training. They must instead rely on the state, who took responsibility for them as children, to support their transition to adulthood. If the state fails to fulfill this responsibility, the economic consequences of such abandonment for former foster youth may be even greater than the risks for children of divorce.¹¹⁰

States therefore have a strong public interest in educating former foster youth. Limiting court-ordered post-majority

¹⁰⁸ Ex parte Bayliss, 550 So.2d 986, 992 (1989) (citing Glen A. Smith, *Educational Support Obligations of Noncustodial Parents*, 36 RUTGERS L.REV. 588, 613–14 (1984)). Similarly, an argument may be made that custodial parents already pay much of the expenses associated with parenting, and it is “[. . .] unfair to require them to shoulder this burden alone.” McMullen, *supra* note 51 at 369. It is noted in response that not all parents are in the financial position to be able to pay college costs. *Id.*

¹⁰⁹ See *supra* discussion Part I.A.

¹¹⁰ This argument could be extended to impose financial responsibility on the non-custodial parents of youth aging out of foster care, assuming parental jurisdiction was not terminated. If these parents could afford the cost of college for children raised by the foster care system, this theory would be a strong analogy to the costs imposed on divorced parents. However, this contention is impractical: Given the limited financial resources of most parents whose children land in foster care, it is unlikely that such parents would be able to financially support college costs for their children.

educational support to apply only to children who turned eighteen while in the custody of a natural parent inhibits the desirable social goal of creating an educated citizenry. Moreover, it allows the state, who assumes a parental role for children in foster care, to escape the parental obligations imposed on every other parent in some jurisdictions. The same educational opportunities provided to children of divorce should be available to children of foster care.¹¹¹ In addition, state failure to support the post-secondary educational or training expenses of former foster youth places them at risk of becoming a permanent economic underclass—which will ultimately cost states significantly more in long-term expenses.¹¹²

III. PROPOSAL: STATE FUNDING FOR POST-SECONDARY EDUCATIONAL EXPENSES OF FORMER FOSTER YOUTH

States assuming custody of foster children operate under a constitutional obligation to protect such youth from harm. States also assume a parental role for foster children, and “the privilege of parenthood carries with it the duty to assure a necessary education for children.”¹¹³ For most youth aging out of foster care, like other children from non-intact families, some type of post-secondary education or vocational training will likely be necessary to achieve successful independence.¹¹⁴ Therefore, just

¹¹¹ Thirteen states currently allow courts to award post-secondary educational expenses to be paid by a non-custodial parent, but do not provide state-funded tuition waivers for emancipated foster youth: Alabama, Colorado, Illinois, Iowa, Indiana, Mississippi, Missouri, New York, North Dakota, Oregon, Vermont, Georgia, and Hawaii. See CRS Report, *supra* note 68, at 8. See also Law Offices of Raj Bains, P.S.C., *An Evaluation of Post-Secondary Educational Support on a State-By-State Basis*, DIVORCENET.COM, July 17, 2004, http://www.divorcenet.com/states/washington/wa_art02. Oregon and Georgia offer tuition assistance but not tuition waivers. CRS Report, *supra* note 68, at 8. Notably, states which provide post-majority support to children of divorce but do not provide state-funded educational support to children raised by the foster care system are creating an inherently unequal structure, which could raise equal protection concerns. Youth reaching the age of majority with at least one parent able to pay child support may have their post-secondary educational expenses ordered by a court. In contrast, youth with the foster care system as their parent will have no such access to court-ordered post-secondary expenses. Indeed, depending on the state in which the youth ages out of care, the youth's educational support may be limited to receiving only the \$5,000 federal ETV voucher with no additional state funds.

¹¹² See *supra* Part I.B.; see also *infra* Part IIIV.C.

¹¹³ *Newburgh v. Arrigo*, 443 A.2d 1031, 1038 (1982).

¹¹⁴ See *supra* Part I.B. It is certainly true that some young adults emancipating from the foster care system do not wish to attend post-secondary education or vocational training. Others may be ineligible for post-secondary education because they have not yet completed high school.

as many states recognize the need for divorced parents to provide educational support for children of broken homes, states themselves should fund post-majority educational opportunities for children raised in state custody.

Government programs could provide post-secondary education and training programs to foster youth in a number of ways. First, the federal government could take a more active role in ensuring the educational success of youth leaving foster care. For example, Congress could amend the Chafee Act to require states to waive fees and tuition at public colleges, universities, and vocational training programs for emancipated foster youth. Additional Chafee conditional funds could be allocated for this purpose to assist states with the cost of such waivers.

While federal action in this area would certainly be an effective way to enforce state-funded educational opportunities for former foster youth, it would also raise concerns. The Chafee Act is designed to provide flexibility to states; a mandate to states to waive all public educational fees and tuition would arguably go against the spirit of the law. A risk also exists that states wishing to avoid tuition waivers would choose to forego Chafee Act funds entirely.

Additionally, some states are already failing to serve all youth entitled to Chafee funds.¹¹⁵ The potential for state misuse of Chafee funds in the area of education would be especially problematic for students enrolled in college or vocational programs. A student might miss a semester or an entire academic term due to a state's inability to administer funds or a conflict between states and the federal government over funding, which could derail a youth's educational success.

Thus, a federal amendment to the Chafee Act requiring states to waive fees and tuition for public educational programs would likely not be the most successful method to provide educational opportunities to former foster youth.¹¹⁶ Rather, a state-by-state

¹¹⁵ CRS Report, *supra* note 68, at 3 (In 2003, one-third of states reported "[...] serving less than half of eligible youth" with Chafee funds; child welfare administrators and youth interviewed by federal government officials "said that they were unaware of the [Chafee] services [available to them].").

¹¹⁶ A federal amendment to the Chafee Act could create a federal loan system, with foster youth applying directly to the federal government for post-majority educational funds. This would eliminate the complication of state implementation of funds. However, Congress would need to create an administrative body to distribute such funds directly to youth, which would go beyond the structure of the existing Chafee Act.

legislative advocacy approach might be a more realistic way to offer educational help to former foster youth. Relying on individual state legislatures to implement tuition waivers could be an admittedly slow process, but states may look to already existing programs as models.

A. *The Model: Massachusetts*

The sixteen states already providing free tuition and fee waivers for former foster youth should be applauded.¹¹⁷ Each of these states, however, offers a different level of financial support while many other states offer none. States legislatures could look to Massachusetts for an existing practical and effective model of post-secondary educational and training support for former foster youth.

Massachusetts provides free tuition at any one of the 29 state or community colleges and state universities to current or former foster children between the ages of 17 and 24.¹¹⁸ To be eligible, the youth must have been in state custody for at least a year and neither adopted nor returned home.¹¹⁹ Youth must be enrolled in the institution full-time, and must contribute to educational expenses through work study programs.¹²⁰

In addition to waiving fees and tuition, Massachusetts also offers financial aid grants to cover expenses for current and

¹¹⁷ See discussion *supra* Part II.C. Some states, such as Michigan, offer tuition grants for the children of deceased or disabled veterans. The Children of Veterans Tuition Grant Act provides scholarship assistance for up to four years and a total of up to \$11,200. See also MICH. DEPT OF TREAS., OFFICE OF SCHOLARSHIPS & GRANTS, CHILD. OF VETERANS TUITION GRANT FACT SHEET: ACAD. YEAR 2008–09 (June 2008) available at www.michigan.gov/documents/FactSheetCVTG_150216_7.pdf. To be eligible, students must be between the ages of 16 and 26, must be the adopted or natural child of a Michigan veteran, and must be a Michigan resident for 12 months before applying for the funds. *Id.*

¹¹⁸ MASS. BD. OF HIGHER EDUC., OFFICE OF FIN. ASSISTANCE, DSS TUITION WAIVER FOR FOSTER CARE CHILD., available at <http://www.osfa.mass.edu/default.asp?page=fosterChildWaiver> (last visited Feb. 26, 2008) [hereinafter MASSACHUSETTS TUITION WAIVER]. The age of majority in Massachusetts is eighteen. MASS. GEN. LAWS Ch. 4, § 7.

¹¹⁹ The state offers a similar tuition waiver for all youth age 24 and under who were adopted out of the Department of Social Services. See MASS. BD. OF HIGHER EDUC., OFFICE OF FIN. ASSISTANCE, DSS ADOPTED CHILD. TUITION WAIVER, available at <http://www.osfa.mass.edu/default.asp?page=adoptedChildWaiver> (last visited Feb. 26, 2008). In addition, the William Warren Scholarship program provides scholarships ranging from \$250 to \$4000 for educational and vocational programs to any youth under age 25 for was in DSS care or custody for at least one year. CRS Report, *supra* note 68, at 42.

¹²⁰ MASSACHUSETTS TUITION WAIVER, *supra* note 118.

former foster youth attending college.¹²¹ Youth age 24 and under who sign a voluntary agreement with the Department of Social Services establishing the terms for receiving aid, and have already exhausted financial aid opportunities, are eligible to receive up to \$6,000 annually to offset costs of higher education at any institution of higher learning throughout the continental United States.¹²² This grant program was funded by the Massachusetts legislature in 2001, and indicates legislative appreciation for the fact that youth must have some way to pay for living expenses while attending school full time.¹²³

The Massachusetts model is notably successful. In 2008, Massachusetts reported to the federal government that 17% of youth discharged from foster care in 2007 were enrolled in a four-year college, and 9% were enrolled in a post-secondary vocational training.¹²⁴ These numbers present a stark contrast to California, a state which does not provide tuition waivers for four-year colleges to youth emancipating from foster care. According to California's 2007 Independent Living Program ("ILP") report, only 2.4% of California youth eligible to receive ILP services were enrolled in a four-year college and 3.5% were enrolled in vocational programs.¹²⁵ The statistical outcomes therefore suggest a connection between state-funded programs and educational success. If a state provides tuition waivers to emancipating youth, it will likely have a more educated (and consequently more employable) former foster youth population.

¹²¹ MASS. BD. OF HIGHER EDUC., OFFICE OF FIN. ASSISTANCE, FOSTER CHILD GRANT PROGRAM, available at <http://www.osfa.mass.edu/default.asp?page=fosterChild> (last visited Feb. 26, 2008). In July 2008, Massachusetts enacted a law waiving post-secondary educational fees for former foster youth. S 2520, 185th Leg., §§ 21-22 (Mass. 2008) (enacted).

¹²² *Id.*

¹²³ M.G.L.A. 18B § 18.

¹²⁴ Chafee Foster Care Indep. Program and Educ. and Training Program, *Summary 2007*, (Mass.) (on file with author).

¹²⁵ ST. OF CAL., HEALTH AND HUMAN SERVS. AGENCY, DEPT OF SOC. SERVS., INDEP. LIVING PROGRAM ANNUAL STAT. REP., FED. FISCAL YEAR OCT. 1 THROUGH SEPT. 30, available at www.dss.cahwnet.gov/getinfo/acl07/pdf/07-43.pdf (last visited Apr. 3, 2008). 44,572 youth were eligible to receive ILP services in California during the 2007 fiscal year. *Id.* 1,576 youth were enrolled in vocational education or on-the-job training, 3,361 youth were enrolled in community colleges and 1,108 youth were enrolled in 4-year college programs. *Id.*

B. The Proposal: Educational Assistance Programs for Former Foster Youth

To fulfill their substantive due process obligation to prepare former foster youth for adulthood, states not currently offering post-secondary educational or vocational assistance should consider the implementation of “Former Foster Youth Educational Assistance Programs.” Using state funds, such programs would offer financial assistance to all emancipated foster youth wishing to pursue education in the form of public colleges, universities, or vocational schools.

The details of funding and implementation of such programs could be determined by individual states, but certain aspects of the Massachusetts model should be adopted by all states.¹²⁶ First, tuition and fee waivers at public institutions are appropriate for youth who were public wards. In addition to tuition and fee waivers, some form of subsidy for living expenses must be provided to youth enrolled in full-time academic or vocational training. Support for living expenses may take the form of grants funded by the state legislature (as in Massachusetts), grants funded by state implementation of Chafee funds, or other work-study grants.

Former Foster Youth Educational Assistance Programs should extend the age of tuition waiver eligibility for former foster youth to at least 24. In this way, states would allow for the fact that not all youth are able, emotionally or otherwise, to attend post-secondary training programs immediately after emancipating from foster care. For some youth, a year or two spent trying to survive in the “real world” may increase the youth’s level of maturity. A more mature student may be more likely to succeed in a rigorous college or vocational program. In this way, allowing an older youth to benefit from post-secondary educational opportunities may pave the way for greater long-term success.¹²⁷

¹²⁶ Uniform programs throughout the states would serve youth well, particularly those youth who wish to leave their state of origin after emancipation to attend school. Implementation of similarly funded programs for former foster youth in each state would certainly be a challenge with a state-by-state legislative advocacy approach, but it is worthy of consideration.

¹²⁷ Foster Youth Educational Assistance Programs could design creative programs to assist former foster youth in college. For example, states could create peer support programs, such as tutoring and educational instruction to help former foster youth who may be struggling academically. Peer support programs would also serve a useful role

States need not pay for a youth's entire educational bill, but could instead expect youth to contribute financially to the cost of their own educations. It is certainly reasonable to require students to exhaust all financial aid opportunities before receiving state funds. In addition, a work-study requirement would be an integral part of the Foster Youth Educational Assistance Program. Many American college students must work in some way to be able to afford college.¹²⁸ Requiring former foster youth to work in order to receive financial support would place these students on an equal footing with their fellow students. Moreover, work-study programs often provide students with the opportunity to obtain work experience and professional contacts. A work-study requirement would also compensate costs for the state, and would enable former foster youth to assume some responsibility for the cost of their educational programs.

Providing access to higher education for former foster youth will clearly benefit this population, who will be better prepared to achieve self-sufficiency as adults, but it will also benefit states. First, as discussed in Part III.C. *infra*, educated former foster youth will be less likely to impose costs on the state in the form of government benefits, such as unemployment or housing benefits, or incarceration costs. Thus, as this population becomes more independent, states will obtain significant financial savings. Furthermore, implementation of Former Foster Youth Educational Assistance Programs furthers the public policy goal of creating an educated citizenry. As they become self-sufficient adults, former foster youth will be in a better position to contribute economically to the larger society.

C. Arguments Against Former Foster Youth Educational Assistance Programs

State legislation providing post-secondary educational opportunities for former foster youth will remove some of the significant barriers facing youth when they reach "the real

connecting former foster youth with their fellow college students, thereby offering a support network to students experiencing stressful college experiences.

¹²⁸ BUREAU OF LAB. STAT., COLLEGE ENROLLMENT AND WORK ACTIVITY OF 2006 HIGH SCHOOL GRADUATES, available at <http://www.bls.gov/news.release/hsgec.nr0.htm> (last visited Apr. 3, 2008) ("40.8 percent [of full-time college students] were in the labor force, either working or looking for work, in October 2006. . . . 81.0 percent of part-time college students were in the labor force.").

world.” The most likely argument in opposition to such statutes is cost: state legislatures may be concerned about the price of granting tuition waivers and living expenses for former foster youth attending public institutions.

However, the cost of educating former foster youth is far outweighed by the potential for long-term savings. Society pays for its failure to properly prepare youth for emancipation in the form of public assistance, homeless aid, health care for the indigent, loss of taxable income, and incarceration.¹²⁹ One study showed that society would save \$1.7 to \$2.3 million for each “high risk” youth that is “saved.”¹³⁰

Given the high proportion of former foster youth who spend some time incarcerated after emancipation, it is reasonable to compare the costs of education with the costs of incarceration paid by the state. For example, the average cost of attending a 4-year program at a public institution within the University of California system, including room and board, was approximately \$21,000 per year in 2005-2006.¹³¹ During the same time period, 2005-2006, the average cost of incarceration in a California State Prison was \$36,016.¹³² These figures do not account for the “more important but harder to quantify” cost of losing potentially educated and skilled members of the workforce in California.¹³³ A state choosing to support its vulnerable youth in the form of preventive measures such as education, rather than remedial measures like incarceration, will ultimately save significant funds.

A second concern for states funding post-secondary educational opportunities for former foster youth is the risk that parents would place their children into foster care in order for the states to pay college or vocational training expenses when the youth reach the age of majority. Additionally, states with comprehensive post-secondary educational programs for former

¹²⁹ Delgado, *supra* note 21, at 2.

¹³⁰ Magyar, *supra* note 94, at 603 (citing Mark A. Cohen, *The Monetary Value of Saving a High-Risk Youth*, 14 J. QUANTITATIVE CRIMINOLOGY 5, 27 (1998)).

¹³¹ CAL. POST-SECONDARY EDUC. COMM’N, THE AFFORDABILITY CHALLENGE IN CAL. HIGHER EDUCATION: OPTIONS FOR CHANGE, (Jan. 2007) available at http://eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/27/fd/a4.pdf.

¹³² Urban Strategies Council, *The Rising Costs of Incarceration: Criminal Investment Decisions*, www.urbanstrategies.org/programs/csj/documents/CostsofIncarcerationFlyer_08.06.07_BH.pdf (last visited February 28, 2008).

¹³³ Delgado, *supra* note 21, at ii.

foster youth may raise concerns that foster youth from other states would cross state lines to be involved in such programs. An eligibility requirement of at least one year spent in state foster care, as is the case in Massachusetts, would serve to alleviate these concerns and deter potential abuse of the program.

CONCLUSION

When states assume a parental role for children in foster care, they also assume a constitutional duty to properly prepare those youth for emancipation.¹³⁴ Statistics revealing disproportionate numbers of former foster youth in homeless, incarcerated, unemployed and undereducated populations demonstrate the failures of states to prepare foster children for life as adults. Although expanding emancipation services or extending the age of foster care jurisdiction are commendable goals, they will not provide long-term solutions. As federal and state legislatures debate various ways to remedy the troubled status of former foster youth, they should consider the importance of post-secondary education or vocational training as a necessary component of achieving self-sufficiency. Unfortunately, the cost of obtaining such education is an insurmountable barrier for many former foster youth.

This essay thus recommends that every state provide funding for post-majority educational programs for emancipated foster youth in the form of Former Foster Youth Educational Assistance Programs. The Massachusetts model is a particularly strong example of successful state implementation of tuition waivers and grants for living expenses for former public wards. The cost of funding educational programs for this population will be off-set by states' significant savings; states who educate emancipated youth now will be less likely to pay welfare benefits or incarceration costs for them later. By providing the key to successful independence, state-funded post-majority educational support will enable youth to rise above the challenges of foster care and ultimately flourish as adults.

¹³⁴ See *supra* notes 14–17.